

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GEOFFREY L. MCCABE, AN)
INDIVIDUAL RESIDING IN)
CALIFORNIA,)
)
 PLAINTIFF,) CASE NO. 10CV0581-JLS (JMA)
)
VS.) SAN DIEGO, CALIFORNIA
)
FLOYD ROSE GUITARS, ET AL.,) THURSDAY
) JUNE 6, 2013
 DEFENDANTS.) 7:01 P.M.
_____)

TRANSCRIPT OF SETTLEMENT AGREEMENT
BEFORE THE HONORABLE JAN M. ADLER
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFF: SAN DIEGO IP LAW GROUP, LLP
BY: TREVOR Q. CODDINGTON, ESQ.
 JAMES V. FAZIO, ESQ.
 12526 HIGH BLUFF DRIVE, SUITE 300
 SAN DIEGO, CA 92130

FOR THE DEFENDANT: PARKER, SHUMAKER, MILLS, LLP
BY: WILLIAM K. MILLS, ESQ.
 JUSTIN D. DENLINGER, ESQ.
 801 SOUTH FIGUEROA STREET
 SUITE 1200
 LOS ANGELES, CA 90017

TRANSCRIPT ORDERED BY: JUSTIN DENLINGER, ESQ.

TRANSCRIBER: CAMERON P. KIRCHER

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING;
TRANSCRIPT PRODUCED BY TRANSCRIPTION.

1 SAN DIEGO, CALIFORNIA - THURSDAY, JUNE 6, 2013

2 7:01 P.M.

3 THE CLERK: CASE NUMBER 10CV0581-JLS(JMA), MCCABE
4 VERSUS FLOYD ROSE GUITARS, ET AL., PLACING SETTLEMENT ON THE
5 RECORD.

6 THE COURT: GOOD EVENING, EVERYONE. I WANT TO THANK
7 EVERYONE FOR THE SUCCESSFUL RESOLUTION OF THE CASE THAT WAS
8 NEGOTIATED TODAY.

9 AND NOW I'D LIKE TO HAVE APPEARANCES OF COUNSEL,
10 PLEASE.

11 MR. CODDINGTON: TREVOR CODDINGTON AND JAMES FAZIO
12 OF SAN DIEGO IP LAW GROUP REPRESENTING PLAINTIFFS JEFFREY
13 MCCABE AND KAHLER INTERNATIONAL, INC.

14 THE COURT: THANK YOU.

15 MR. MILLS: GOOD AFTERNOON, YOUR HONOR. WILLIAM
16 MILLS, JUSTIN DENLINGER, PARKER, SCHUMAKER, MILLS, ON BEHALF
17 OF ALL DEFENDANTS. AND ALSO JILL LITTENBERG OF THE LERNER
18 DAVID FIRM IN NEW JERSEY IS HERE AS WELL.

19 THE COURT: THANK YOU.

20 ALL RIGHT. IT'S MY UNDERSTANDING THAT MR. MILLS IS
21 GOING TO PUT THE ESSENTIAL TERMS OF THE SETTLEMENT ON THE
22 RECORD.

23 MR. MILLS: THANK YOU, YOUR HONOR.

24 THE PARTIES HAVE AGREED THAT -- TO SETTLE THE
25 PENDING LITIGATION AND ALL OF ITS RELATED -- ALL MATTERS

1 RELATING TO THE FLOYD ROSE SPEEDLOADER TREMOLO PRODUCTS AS
2 THEY EXIST TODAY AND WERE RAISED IN THIS CASE. AND THIS
3 IS -- WE ARE CONTEMPLATING THAT THIS WILL RESULT IN A FORMAL
4 DOCUMENT TO BE EXECUTED LATER.

5 THE DEFENDANTS WILL PAY TO PLAINTIFFS \$300,000
6 WITHIN 14 CALENDAR DAYS. PLAINTIFFS WILL GIVE DEFENDANTS
7 INSTRUCTIONS ABOUT WIRE INSTRUCTIONS OR CHECK, WHATEVER IT IS
8 YOU WANT, PLEASE LET US KNOW.

9 THE ITC ACTIONS THAT HAVE PREVIOUSLY BEEN INITIATED
10 BY MR. MCCABE AND MR. KAHLER REGARDING THE SPEEDLOADER
11 PRODUCTS WILL BE DISMISSED OR DROPPED, WHATEVER THE
12 APPROPRIATE TERM IS.

13 THERE WILL BE -- THERE IS GOING TO BE A LICENSE
14 AGREEMENT BETWEEN MR. MCCABE AND MR. ROSE, WHICH WILL INVOLVE
15 A 50 CENTS PER STRING SET FEE -- ROYALTY, EXCUSE ME. A 50
16 CENT PER STRING SET FEE, \$10 PER SPEEDLOADER TREMOLO ON A
17 GUITAR WITH A PRICE, DEALER NET, LESS \$599; \$20 FEE FOR EACH
18 SPEEDLOADER TREMOLO ON A GUITAR WITH A PRICE, DEALER NET, IN
19 EXCESS OF \$600, \$600 OR MORE; AND A 7.5 PERCENT ROYALTY ON --
20 DEALER NET, WHICH IS MR. ROSE'S INVOICE PRICE, ON FLOYD ROSE
21 BRANDED GUITARS.

22 AS FOR THE ROYALTIES, THERE WILL BE A -- THE
23 ROYALTIES WILL BE PAID QUARTERLY AND BE SUBJECT TO A STANDARD
24 AUDIT, PERFORMED AT MR. MCCABE'S -- AT MR. MCCABE'S COST OR
25 EXPENSE. AND ALL REPORTING CEASES WITH THE -- WITH THE RIGHT

1 TO THE LAST EXPIRED -- WITH THE TERMINATION OF THE LAST
2 EXPIRED PAYMENT ON THE PATENT.

3 I'M GOING TO LET MR. XAVIER FROM DAVITT & HANSER
4 EXPLAIN DAVITT & HANSER'S CONTRIBUTIONS TO THE SETTLEMENT,
5 YOUR HONOR.

6 THE COURT: THANK YOU.

7 MR. MILLS: YOU JUST HAVE TO SAY WHAT YOU'RE GOING
8 TO DO.

9 MR. XAVIER: WELL, WE WILL DISCUSS -- IF YOU GUYS
10 DISAGREE WITH ANYTHING, PLEASE LET ME KNOW. I'VE NEVER
11 DONE THIS.

12 DAVITT & HANSER AGREES TO TAKE ONE OF MR. MCCABE'S
13 TREMOLOS OF CHOICE, THE SALE PRICE OF THAT TREMOLO IS TO BE
14 DETERMINED AT A LATER DATE. WE WILL PUT IT ON ONE BC RICH
15 MODEL OF THEIR CHOICE, OR COLLECTIVELY WE WILL MAKE THE
16 DECISION WHICH MODEL IT GOES UPON. WE WILL TAKE THAT GUITAR
17 TO OUR TRADE SHOWS THAT WE TAKE AND DEBUT AND LAUNCH ALL OF
18 OUR PRODUCTS AND TREAT IT LIKE IT WAS ONE OF OUR OWN MODELS.

19 WE WILL HANG IT ON THE WALL AT NAMM, DRAW ATTENTION
20 TO IT BY OUR SOCIAL MEDIA VIA FACEBOOK, TWITTER, VINE, ALL
21 THE OTHER SOCIAL MEDIA CITES, AND ALSO PLACE THAT GUITAR ON
22 OUR WEBSITE, TRYING TO DRIVE SALES FOR THE PRODUCT IN GOOD
23 FAITH TO HELP HIM BUILD HIS BRAND.

24 THE COURT: THANK YOU.

25 MR. MILLS: AND TO CLARIFY, THAT MEANS NO PRINT

1 ADVERTISING.

2 MR. XAVIER: NO PRINT ADVERTISING. JUST ALL SOCIAL
3 MEDIA. BC RICH DOES NOT DO PRINT ADVERTISING. WE USE
4 DIGITAL MEDIA FOR ALL OF OUR FORMS.

5 THE COURT: SO SOCIAL MEDIA AND THE BC RICH WEBSITE?

6 MR. XAVIER: AT THE BCRICH.COM WEBSITE, YES, SIR.

7 MR. MILLS: THANK YOU VERY MUCH.

8 THE PARTIES HAVE AGREED TO INCLUDE IN THE WRITTEN
9 DOCUMENT A STANDARD NONDISGORGEMENT CLAUSE, A STANDARD
10 CONFIDENTIALITY CLAUSE, A PREVAILING PARTY ATTORNEYS' FEES
11 CLAUSE IN CASE -- IN CASE A DISPUTE ARISES TO ENFORCE THE
12 AGREEMENT.

13 WE WILL MAKE -- WE MAKE SPECIFIC NOTE THAT THE
14 CURRENTLY -- THE PENDING TRADE DRESS SUIT IN THE CENTRAL
15 DISTRICT CASE WILL -- IS NOT AFFECTED BY THIS SETTLEMENT. IT
16 IS SPECIFICALLY EXCLUDED.

17 THE SPEEDLOADER SOLD BY FLOYD ROSE OR FLOYD ROSE'S
18 SPEEDLOADERS SOLD IN THE FUTURE WILL CONTAIN A PATENT MARKING
19 REFLECTING LICENSE BY MR. -- I'M SORRY, WILL INCLUDE THE
20 SPECIFIC PATENTS-IN-SUIT. I'M SORRY. THE NONEXPIRED
21 PATENTS.

22 ALL RIGHT. AND THE CHOICE OF LAW WILL BE CALIFORNIA
23 FOR THE AGREEMENT, YOUR HONOR.

24 AM I MISSING ANYTHING?

25 MR. CODDINGTON: DID YOU INCLUDE AN AUDIT PROVISION?

1 MR. MILLS: I DID.

2 MR. CODDINGTON: THANK YOU.

3 MR. MILLS: I DID SAY ATTORNEYS' FEES. AND I ALSO
4 WANT TO MAKE SURE THAT I DIDN'T MISSPEAK, THAT THE CHECK FOR
5 \$300,000 WILL BE DELIVERED WITHIN 14 DAYS AFTER THE EXECUTION
6 OF THE WRITTEN AGREEMENT.

7 THE COURT: ALL RIGHT. THANK YOU.

8 DOES PLAINTIFF'S COUNSEL HAVE ANYTHING ELSE TO ADD?

9 MR. CODDINGTON: JUST CLARIFY THAT THE ITC
10 INVESTIGATION NUMBER THEY ARE REFERRING TO IS NO. 337TA708,
11 AND THAT PLAINTIFFS AGREE NOT TO ENFORCE THE CONSENT ORDER.

12 THE COURT: OKAY. THANK YOU. ALL RIGHT. THANK YOU
13 VERY MUCH, COUNSEL.

14 AT THIS TIME I'M GOING TO ASK THE PARTIES WHETHER
15 THEY ASSENT TO THE TERMS OF THE SETTLEMENT. I WANT TO
16 EXPLAIN TO ALL OF THE PARTIES THAT BY ASSENTING TO THE TERMS
17 OF THE SETTLEMENT, YOU RECOGNIZE THAT YOU HAVE AGREED TO A
18 BINDING SETTLEMENT, WE ARE PUTTING THIS SETTLEMENT ON THE
19 RECORD, AND THE TERMS OF THE SETTLEMENT WILL THEREFORE BE
20 BINDING UPON THE PARTIES.

21 WE'LL START WITH THE PLAINTIFFS. FIRST OF ALL,
22 JEFFREY L. MCCABE, MR. MCCABE, IF WOULD YOU COME TO THE
23 MICROPHONE, SIR.

24 MR. MCCABE, DO YOU ASSENT TO THE TERMS OF THE
25 SETTLEMENT?

1 MR. MCCABE: YES, I DO.

2 THE COURT: THANK YOU, SIR.

3 WE HAVE GARY KAHLER HERE. MR. KAHLER, WOULD YOU
4 COME TO THE MICROPHONE, PLEASE.

5 ON BEHALF OF KAHLER INTERNATIONAL, INC., MR. KAHLER,
6 DO YOU ON BEHALF OF KAHLER INTERNATIONAL, INC., ASSENT TO THE
7 TERMS OF THE SETTLEMENT?

8 MR. KAHLER: YES, I DO.

9 THE COURT: THANK YOU, SIR.

10 ALL RIGHT. NOW TURNING TO THE DEFENSE SIDE.

11 MR. ROSE, IF YOU WOULD PLEASE COME TO THE PODIUM.

12 MR. ROSE, ON BEHALF OF YOURSELF AS AN INDIVIDUAL,
13 AND ON BEHALF OF FLOYD ROSE GUITARS AND FLOYD ROSE MARKETING,
14 INC., DO YOU ASSENT TO THE TERMS OF THE SETTLEMENT?

15 MR. ROSE: YES, I DO.

16 THE COURT: THANK YOU, SIR.

17 MR. ROSE: I AM SPEAKING FOR SOMEBODY ELSE, I GUESS.
18 AP GLOBAL AS WELL.

19 THE COURT: YES. WHILE YOU'RE UP AT THE PODIUM, THE
20 COURT HAS RECEIVED A LETTER FROM MR. CAPPICIO. I'M
21 FORGETTING MY ITALIAN.

22 MR. ROSE: "CAPPICIO."

23 THE COURT: I SHOULD HAVE REMEMBERED THAT. I WENT
24 TO ITALY LAST SEPTEMBER; HOW SOON I FORGET.

25 MR. CAPPICIO HAS INDICATED THAT YOU ARE HIS DESIGNEE

1 AT THIS SETTLEMENT CONFERENCE, AND THAT YOU HAVE THE
2 UNFETTERED DISCRETION AND AUTHORITY TO ENTER INTO A
3 SETTLEMENT ON BEHALF OF AP GLOBAL ENTERPRISES, INC.

4 SO, SIR, DO YOU, ON BEHALF OF AP GLOBAL ENTERPRISES,
5 ASSENT TO THE TERMS OF THE SETTLEMENT?

6 MR. ROSE: YES, I DO.

7 THE COURT: THANK YOU, SIR.

8 ALL RIGHT. NEXT WE HAVE MR. XAVIER, VICE-PRESIDENT
9 OF SALES AT DAVITT & HANSER MUSIC COMPANY.

10 MR. XAVIER, ON BEHALF OF DAVITT & HANSER'S MUSIC
11 COMPANY, DO YOU ASSENT TO THE TERMS OF THE SETTLEMENT?

12 MR. XAVIER: YES, YOUR HONOR, I DO.

13 THE COURT: IN ADDITION, THE COURT HAS RECEIVED A
14 LETTER FROM PING WELL INDUSTRIAL COMPANY, LTD. PING WELL HAS
15 INDICATED IN THIS LETTER THAT THEY DESIGNATE MR. XAVIER TO
16 HAVE THE UNFETTERED DISCRETION AND AUTHORITY ON BEHALF OF
17 THEM TO ENTER INTO A SETTLEMENT AT TODAY'S CONFERENCE.

18 AND, MR. XAVIER, ON BEHALF OF PING WELL, DO YOU
19 ASCENT TO THE TERMS OF THE SETTLEMENT?

20 MR. XAVIER: YES, YOUR HONOR, I DO.

21 THE COURT: THANK YOU.

22 AND THEN WE HAVE ON BEHALF OF DEFENDANT SCHALLER
23 ELECTRONIC GMBH, SIR, I DON'T WANT TO MISPRONOUNCE YOUR NAME.
24 IS IT VALTEK (PHONETIC)?

25 MR. VALTEK: YES, YOUR HONOR

1 THE COURT: OKAY. BRETT VALTEK, SIR, ON BEHALF OF
2 SCHALLER, DO YOU ASSENT TO THE TERMS OF THE SETTLEMENT?

3 MR. VALTEK: YES, SIR.

4 THE COURT: THANK YOU.

5 I WANT TO THANK EVERYONE PRESENT FOR ALL YOU DID
6 TODAY TO BRING ABOUT THIS SETTLEMENT. IT WAS A LONG, LONG
7 NEGOTIATION. A LONG DAY'S JOURNEY INTO NIGHT, IN FACT, IF I
8 MIGHT USE THAT LITERARY REFERENCE. AND ALL OF YOU CONDUCTED
9 YOURSELVES IN UTMOST GOOD FAITH, UTMOST PROFESSIONALISM,
10 SOMETHING THE COURT APPRECIATES VERY MUCH.

11 I'M GOING TO GIVE YOU A DEADLINE FOR THE FILING OF A
12 JOINT MOTION FOR DISMISSAL AND PROPOSED ORDER OF DISMISSAL.
13 THE DEADLINE IS JULY 8TH.

14 THANK YOU VERY MUCH.

15 MR. CODDINGTON: THANK YOU, YOUR HONOR.

16 MR. MILLS: THANK YOU, YOUR HONOR.

17 MR. FAZIO: THANK YOU, YOUR HONOR.

18 (PROCEEDINGS CONCLUDED AT 7:13 P.M.)

19 -- OOOOO --

20 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
21 FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE
22 ABOVE-ENTITLED MATTER.

23

24 /S/CAMERON P. KIRCHER
25 TRANSCRIBER

6-11-13
DATE